

**Testimony of Susan Daniels, Deputy Commissioner
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Mr. Chairman, Senator Breaux, members of the Committee, thank you for inviting me here today to talk to you about SSA's representative payee program - particularly as it relates to organizational payees. Today, I will outline for you the Social Security Administration's representative payee program as it applies to organizations, the problems we have faced (including resource constraints), recent changes that we have implemented and legislation we have sent to Congress in order to improve our program. Then, of course, I would be happy to respond to your questions.

History of Representative Payments

Congress passed legislation in 1939 which granted SSA broad discretionary authority to appoint representative payees to receive and disburse benefits for those beneficiaries who were found to be incapable of managing or directing the management of their benefits. The appointment of a payee was intended to ensure that SSA's most vulnerable beneficiaries receive the full support and benefit that their payments are intended to deliver. In this same 1939 legislation, Congress extended benefits to wives of retired workers, and widows and dependent children of deceased workers. Accordingly, the representative payee program was initially designed with the needs of the elderly and children in mind.

Subsequent events, including the enactment of disability benefits in 1956, the enactment of Supplemental Security Income (SSI) in 1972, and demographic and political changes in American society -- such as the de-institutionalization of the mentally ill, and the increase in substance abusers -- have all contributed to the change in the nature of the beneficiary population served by representative payees. Thirty years ago, 5.2 percent of the Social Security population were paid through representative payees. Since the implementation of SSI, this has risen to about 13.3 percent of our 49 million beneficiaries have representative payees -- 6.5 million beneficiaries served by about 4.2 million payees. About 42 percent of beneficiaries who are paid through a representative payee today are disabled.

The Social Security and SSI disability rolls typically include people with special needs, such as the mentally ill and homeless, many of whom are substance abusers. (However, individuals whose sole medical disability is drug or alcohol addiction, no longer qualify for benefits.) Many years ago, these same individuals might have been institutionalized, with the institution serving as their payee. Today, these individuals are not institutionalized and often have no close family willing or able to serve as payee. When such beneficiaries need help in the management of their financial affairs, institutions and organizations, or sometimes acquaintances, have stepped in to act as payees. Many times, in addition to money management, these payees must address social service issues, such as finding shelter for the habitually homeless, dealing with medical decisions, and encouraging beneficiaries to seek treatment for substance abuse or mental illness.

We cannot over-emphasize the valuable role that representative payees serve. When an individual agrees to be a payee for a beneficiary, he or she takes on an important responsibility. Sometimes the task of managing another person's benefits can be a difficult one--especially if the beneficiary is not always cooperative--and payees deserve a lot of recognition for volunteering their time and effort. As I mentioned earlier, many representative payees go beyond fulfilling their basic responsibilities as a payee and provide other valuable services to the beneficiary.

Organizational Payees

As I mentioned earlier, about 6.5 million Social Security and SSI beneficiaries require representative payees. Family members serve as representative payees for about 84 percent of these beneficiaries. Payees for the remaining 16 percent are friends or institutions of various types, such as government or social service agencies, financial organizations and fee-for-service organizations. (Fee-for-service organizations meet the qualifications and are authorized to collect a fee from the beneficiary's payment for their services as representative payee.) Currently, about 45,000 organizational representative payees serve approximately 750,000 Social Security and SSI beneficiaries. Among those, there are approximately:

- 855 fee-for-service payees serving almost 60,000 SSA beneficiaries;
- 1,000 entities (excluding fee-for-service organizations), which we call "volume payees," serving 250,000 beneficiaries. (A "volume payee" is an organization that serves 100 or more beneficiaries.); and
- 360 State mental hospitals serving 80,000 beneficiaries.

In order to qualify to collect a fee, an organization must serve at least 5 beneficiaries and be a:

- State or local government agency whose mission is to carry out income maintenance, social service or health-care related activities;
- State or local government agency with fiduciary responsibilities, or
- Community-based, non-profit social service agency which is bonded or licensed in the state that it serves.

Determining the Need for Representative Payment

The law provides that if the Commissioner determines that it is in the interest of the individual, benefits may be paid to a representative payee. Generally, we appoint a payee if we determine that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. If the beneficiary is under age 18, payment is usually made to a representative payee. (Emancipated minors can receive benefits directly.) In the case of an adult beneficiary, benefits will be paid to a representative payee if the individual is legally incompetent, or mentally or physically incapable of managing or directing the management of his or her benefit payments.

To decide if an individual has a mental or physical impairment that prevents him or her from receiving benefits directly, we look at:

- medical evidence;
- the beneficiary's living situation (such as whether he/she lives alone, if anyone helps him/her manage their funds);
- how the beneficiary is handling money now; and
- what his/her needs are and how they are being met (whether they can obtain their own food, clothing and shelter or if he/she is dependent on others to supply those needs).

Once we determine that an individual needs a payee, SSA identifies persons who are willing and best able to serve in this capacity. Whenever possible, the preferred payee is a family member or friend who has shown interest in the well-being of the beneficiary. When such persons cannot be found, SSA turns to certain organizations that have agreed to perform the duties of a representative payee.

SSA closely reviews all applications for representative payment before selecting a payee. Individuals must show their relationship and interest in the beneficiary. Plus, the beneficiary is given the opportunity

to protest the selection of a prospective payee. We notify the beneficiary that someone has applied to be their payee and who that person or organization is. We ask the beneficiary to contact our field office if they disagree with either the fact that they need a payee or if they would prefer that someone else serve as their representative payee.

Representative Payee Responsibilities

The representative payee is to use the benefit payments only for the beneficiary's current and foreseeable needs or save and invest them, if the beneficiary's current needs are being met. We believe that the representative payment program best accomplishes this when we have a collaboration with the payee and the beneficiary. To that end, we strive for a payee program that:

- preserves the rights of beneficiaries and treats them with respect and dignity;
- keeps beneficiaries well-informed about their benefits;
- prepares new representative payees with a clear understanding of their role and our expectations of them;
- furnishes continuing support to payees as they execute their duties;
- ensures that benefits are used in the best interest of the beneficiary; and
- monitors the use of benefits in an effective and productive manner.

SSA informs the representative payee of his or her responsibilities at the time he/she files to be representative payee and also mails a more extensive guide to the payee once he/she has been selected. Once selected, all representative payees are required to:

- determine the beneficiary's needs and use his/her payments to meet those needs;
- conserve any money left after meeting those needs;
- report any changes or events which could affect the beneficiary's eligibility for benefits;
- help the beneficiary get medical treatment when necessary;
- maintain records of the money received on behalf of the beneficiary and records of all expenditures; and
- complete written reports accounting for the use of the funds.

Annually, SSA requires each representative payee - whether an individual who represents only one beneficiary or an organization that represents hundreds--to give an accounting of the benefits received for each beneficiary and how they were spent. More specifically, the accounting form asks how much of the benefits were spent on food, housing, personal items and how much was saved and in what type of account the money was conserved. (The only exception to this annual accounting process is for State mental institutions which undergo an onsite visit every 3 years.) Each accounting request is controlled to make sure it is completed. All returned forms are reviewed to ensure that responses are complete and acceptable. If incomplete, or if the accounting form raises questions, SSA will contact the payee to resolve the issue. If the representative payee fails to return the accounting form, our local field office conducts a face-to-face interview with the payee, the beneficiary and, if different from the payee, the custodian (e.g., the nursing home if a relative is the payee).

SSA Initiatives to Deter Misuse of Benefits by Organizational Payees

Almost all representative payees provide much needed help to beneficiaries without abusing this responsibility. Unfortunately, there have been some instances of misuse by representative payees. Misuse of benefits occurs when the payee neither uses benefits for the current and foreseeable needs of the beneficiary, nor conserves benefits for the beneficiary. Of the 6.5 million beneficiaries with

representative payees, there are only about 650 instances of misuse confirmed per year, or only about 1 in every 10,000 representative payee cases. The amount of benefits misused by payees is a small percentage of the total benefits paid - about \$3 million per year of the \$30 billion in annual benefits for beneficiaries with payees. However, that is no consolation to a beneficiary who has lost his or her much needed benefits. Nor is it acceptable to those of us charged with administering the Social Security and SSI programs.

SSA is committed to protecting beneficiaries from benefit misuse. The recently televised representative payee misuse case, the Aurora Foundation, Inc., in Martinsburg, West Virginia, has resulted in the president of that organization pleading guilty to the embezzlement of Social Security and SSI beneficiary funds. As a result of our review of this criminal enterprise, SSA has strengthened our oversight process. To that end, we have several new initiatives underway that will help prevent misuse by organizational payees.

Triennial Onsite Reviews of all Fee-for-Service Payees.

SSA has begun a review of the approximately 855 fee-for-service payees on a triennial cycle. SSA will also perform triennial reviews of all volume organizational payees - those serving 100 or more beneficiaries - and of all individual payees serving 20 or more beneficiaries. SSA's Office of the Inspector General will participate, as necessary, in these reviews. This review will ensure payee compliance through a face-to-face meeting with the payee and examination of a sample of beneficiary records. The review includes an assessment of the payee's record keeping, and SSA will interview a sample of beneficiaries in order to assess whether their needs are being met. Expenses may be corroborated with providers of the services. In addition, we will contact vendors to ensure that bills are being paid. We believe that an added benefit of this initiative will be that the lines of communication between SSA and the payee will be improved. Over the last year, approximately 300 of these reviews have already been conducted as part of a pilot process, and a regular ongoing schedule will begin this summer.

Annual Verification of Bonding or Licensing.

Currently, in order to collect a fee from a beneficiary's check, non-governmental fee-for-service organizational payees must be either licensed or bonded as long as they serve as payee. This is a statutory requirement. Beginning June of this year, SSA will require all non-governmental fee-for-service organizations to annually show that they continue to meet those requirements.

A 6-Month Review for All Newly Appointed Fee-for-Service Payees.

SSA will visit fee-for-service payees 6 months after their initial appointment as payee to ensure that they fully understand their duties and responsibilities, and are on the right track with respect to record keeping and reporting. We will focus on their accounting procedures so that, they will be able to account for beneficiaries' funds as well as comply with our requests for review. This initiative is now in place and applies to all new fee-for-service payees appointed on or after January 1, 2000.

Random Reviews of Volume and Fee-for-Service Payees

Each year SSA will conduct a random sample of 30 percent of volume payees (serving 100 or more beneficiaries) and fee-for-service payees. We will review a sample of beneficiary records for compliance with our policies and procedures. We are developing guidelines and instructions needed to implement this initiative. The instructions provide our reviewers with information that includes: how to conduct the

interview, the interviewing forms, how to review the record keeping (bank statements, cancelled checks, bills, contracts, etc.), and how to document our database with the findings from the review. This initiative is scheduled for implementation in Fiscal Year 2001.

In addition, SSA continues to monitor for "trigger" events. That is, we conduct reviews of payees in response to certain "trigger" events, such as third-party reports of misuse and complaints from vendors of failure to receive payment. This review has an emphasis on addressing the complaints.

Finally, we are looking at tightening up the investigation of potential payees. This is consistent with OIG's suggestion that we put more emphasis on the selection of representative payees.

I believe that these measures will help to ensure that organizational representative payees appointed by SSA will carry out their duties and responsibilities in accordance with the policies and procedures that are designed to protect our beneficiaries. This improved organizational payee monitoring process will:

- Provide the oversight necessary to ensure that payees fulfill their duties to our beneficiaries;
- Deter potential misuse by regular site visits coupled with random reviews;
- Provide an opportunity for ongoing education by SSA for these payees about their duties and responsibilities;
- Improve lines of communication between the payee and SSA; and
- Ensure that the payee continues to be qualified under the law to charge a fee for its services.

Further, Social Security attorneys are working in conjunction with several U.S. Attorneys' offices to assist in the prosecution of Social Security program fraud, including representative payee misuse cases.

Legislation

We recognize that administrative actions alone are not sufficient to address all of the problems we identified as a result of our analysis of the Aurora misuse case. We believe that some of these problems can only be resolved through legislation. Therefore, in February, we sent to Congress a legislative proposal for consideration that would provide additional safeguards for beneficiaries with representative payees.

Currently, when *any* payee has been determined to have misused an individual's benefits, SSA can reissue the benefits only in cases where there has been negligent failure on our part to investigate or monitor the payee. In virtually all other cases, the individual loses his or her funds unless SSA or the beneficiary can obtain restitution of the misused benefits from the payee. Additionally, SSA can seek restitution only through civil processes if the representative payee refuses to return the misused funds.

To facilitate restitution of misused funds to beneficiaries, our legislative proposal would require SSA to reissue benefit payments (including any respective fees for fee-for-service payees) in all cases when an organizational payee is found to have misused a beneficiary's funds, without either a finding of negligence on SSA's part or restitution from the organizational payee. Requiring re-issuance of such misused benefit payments, including any fees that were deducted from the beneficiary's benefit, would provide additional protection to the most vulnerable of beneficiaries.

This new authority would enable us to promptly restore benefits that have been misused by an organizational representative payee, thereby avoiding the hardship that can be caused by such a loss. SSA would, through all available avenues of legal recourse, continue to seek restitution of the misused funds from the former representative payee. We would do so for two reasons. First, for the deterrent

effect and, second, to offset the additional costs incurred by the Social Security trust funds or the general fund in restoring misused benefits to the beneficiary.

In addition to this change, the legislative proposal would include other provisions designed to increase the safeguards for beneficiaries with representative payees. Specifically, it would:

- Require non-governmental fee-for-service organizational payees to be bonded *and* licensed, provided that licensing is available under State or local law. (The requirement under current law is bonding *or* licensing.) This proposed requirement would add further safeguards to a beneficiary's funds. State licensing provides some oversight by the state into the organization's business practices, and bonding provides some assurance that a surety company has investigated the organization and approved it for the level of risk associated with the bond. The proceeds from redeemed bonds would reduce the costs to the program when re-issuing benefits in cases of representative payee misuse.
- Provide that when an organization has been found to have misused an individual's benefits, the organization shall not qualify for the fee from that individual's benefits for months the payee misused the funds. Requiring payees to return the fees charged for periods of misuse is reasonable because the payee was clearly not properly performing the service for which the fee was paid. Permitting the organization to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's current and future needs.
- Provide that misused benefits (including any respective representative payee fees) would be treated as an overpayment to the representative payee and, therefore, subject to current SSA overpayment recovery authority. Although SSA has been given expanded authority in the recovery of overpayments (such as tax refund offset, referral to contract collection agencies, notifying credit bureaus, and administrative offset of future federal benefit/payments), these tools cannot be used to recoup benefits misused by a representative payee. Providing that benefits misused by any representative payee would be an overpayment to the payee would provide SSA with additional means for recouping the misused payments. This proposal would also permit re-issuance of the recovered amounts to the beneficiary (unless already re-issued by SSA). This change would improve the protection of all beneficiaries with payees, not just those with organizational payees.

Also, in September 1999, we sent a legislative proposal to Congress that, in addition to other provisions, would extend civil monetary penalty provisions to representative payees that misuse benefits. As it pertains to representative payees, this legislative proposal would allow SSA to impose administrative penalties and assessments against representative payees who make false statements to obtain or retain benefits. This would improve our ability to ensure that individuals who commit this type of fraud against SSA are penalized, even if such individuals are not prosecuted criminally. We urge Congress to give these proposals their prompt attention.

Advisory Committee & Inspector General Recommendations Implemented

To address the evolving needs of the beneficiaries and the payees that assist them, SSA chartered an advisory committee (AdCom) -- a panel of external experts -- to review the representative payee program. In 1995 and 1996, the committee held hearings and conducted research into key representative payment issues. SSA also requested its Office of the Inspector General (OIG) to review and make recommendations to improve the representative payee program. SSA requested these reviews in order to better meet the needs of the changing demographics of our representative payee population.

Both the AdCom and OIG made several recommendations -- from how to select a representative payee to the kind of monitoring program needed. SSA evaluated the recommendations within the framework of our competing priorities and resource limitations. We have implemented several recommendations including:

- The development and distribution of a handbook for organizational payees. (OIG)
- Issuing instructions to field offices to screen payees more thoroughly. (OIG)
- Conducting onsite reviews of fee-for-service and volume payees. (AdCom/OIG)
- Developing and distributing a pamphlet for beneficiaries informing them of their rights and responsibilities. (OIG)
- Changing the focus of the current process from accounting to monitoring and compliance. (OIG)

In addition, we have the following initiatives in process:

- Develop an accounting form tailored to organizational payees. (AdCom/OIG)
- Expand our automated Representative Payment System. (OIG)
- Develop and distribute a handbook for individual payees. (AdCom)
- Instruct field offices to improve controls over retention of supporting documentation of non-responder alerts and accounting forms. (OIG)

Advisory Committee & Inspector General Recommendations Not Implemented

There were some recommendations that we have not adopted. For example, it was suggested that SSA require a high level of case management (such as social services) from organizations that collect a fee (fee-for-service payees). We do encourage organizations to provide extra services (e.g., negotiating the beneficiary's rental agreement with the landlord). However, we did not adopt this suggestion because we believe that requiring extra services would discourage the organization from providing the basic payee services that some individuals would not have otherwise. Another example is the recommendation that SSA only accept a challenge of a beneficiary's capability from those in a position to know. While we agree that a finding of incapability is a serious matter, and we are wary of spurious allegations, our policy is to respond to third party reports of beneficiary incapability by conducting an investigation, regardless of the nature of the source. Only then can we be assured that the beneficiary receives the full benefit of their funds.

Conclusion

In conclusion, let me convey our special concern for beneficiaries who need a representative payee because these are the most vulnerable of our beneficiaries. We will not tolerate misuse of benefits by representative payees and we will continue to strive for ways to strengthen our representative payee program. Recognizing this, we have looked outside of our agency (AdCom) and within (OIG) for improvements. We have implemented some of the recommendations and, as resources permit, we will implement others. We have recently set in motion plans to improve our monitoring and oversight process. In addition, we have met with representatives of organizations that support the interests of beneficiaries with payees and, at their request, we are working with them to develop a statutory definition of misuse. Finally, we believe with the help of Congress, we will be able to improve the package of protections for our beneficiaries with payees when funds have been misused.